

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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EASTMAN KODAK COMPANY,

Plaintiff,

02-CV-6564T

v.

**DECISION  
and ORDER**

AGFA-GEVAERT N.V. and AGFA CORP.,

Defendants.

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By Order dated September 26, 2006, upon consent of the parties, I appointed Special Master Joseph W. Berenato, III, as a Special Trial Master in this matter for the purpose of conducting a bench trial and issuing a Report and Recommendation to the court as to how the issues of liability in this case should be resolved. From May 3 to May 11, 2007, Special Master Berenato conducted the bench trial of this matter, and on September 7, 2007, he issued a thorough, well-reasoned 122 page Report and Recommendation recommending that the court find: (1) that the defendants' products Cronex 10TL and Orthovision G infringe plaintiff's U.S. Patents Nos. 4,425,425, 4,425,426, and 4,439,520; (2) that the remaining accused products do not infringe plaintiff's patents; (3) that the asserted claims of the plaintiff's patents are valid; (4) that the asserted claims of the plaintiff's patents are enforceable; (5) that the defendants' infringement of plaintiff's patents was not willful, and (6) that plaintiff failed to provide defendant with

notice of infringement with respect to Cronex 10TL prior to expiration of the patents in suit, and therefore, plaintiff is not entitled to damages for the infringement of those patents with respect to Cronex 10TL.

On September 27, 2007, and October 2, 2007, respectively, Special Master Berenato issued two additional Reports with respect to evidentiary issues and trial matters. Thereafter, in accordance with the court's September 26, 2006 Order, the parties filed objections to the Special Master's Reports.

Following a review of the record de novo, for the reasons set forth in Special Master Berenato's September 7, 2007 Report and Recommendation, I adopt that Report and Recommendation in its entirety without modification. As an initial matter, I find no legal error in any aspect of the Special Master's Report and Recommendation. The authority relied on by the Special Master is appropriate and controlling, and I find no error in the Special Master's legal analysis or conclusions.

With respect to the Special Master's development and discussion of the factual record in this matter, his analysis of the facts is so comprehensive and so complete, additional discussion of the factual issues would serve no fruitful purpose. In short, Special Master Berenato provided the court and the parties with an extensive and detailed explanation as to how and why he arrived at his recommendations. Because I agree in whole

with his Report and Recommendation, I adopt his September 7, 2007 Report and Recommendation in its entirety, and make it a Final Order of this Court. With respect to the parties' objections, I find that the issues raised in their objections were thoroughly explained by Special Master Berenato in his Report and Recommendation, and accordingly, I deny those objections without further comment. Finally, for the reasons stated in the Special Master's September 27, 2007 and October 2, 2007 Reports, I adopt those Reports in their entirety.

ALL OF THE ABOVE IS SO ORDERED.

S/ Michael A. Telesca

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MICHAEL A. TELESCA  
United States District Judge

Dated: Rochester, New York  
April 22, 2008